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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**THE DEPARTMENT OF TRANSPORTATION)
OF THE STATE OF ILLINOIS, for and in)
behalf of the People of the State of Illinois,)**

Petitioner,)

vs.)

NORFOLK SOUTHERN RAILWAY COMPANY,)

Respondent.)

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Illinois Commerce Commission
RAIL SAFETY SECTION

No. 01-0066

(Parcels 5680031PE, 5680031TE-1 and 5680031TE-2)

SECOND REVISED PROPOSED ORDER

BY THE COMMISSION:

On October 26, 2001, the Department of Transportation of the State of Illinois for and in behalf of the People of the State of Illinois (hereafter the "Department" or "Petitioner"), filed a verified Petition and on December 20, 2001 filed an Amended Verified Petition against the Norfolk Southern Railway Company, a corporation, with the Illinois Commerce Commission ("Commission") for approval of the taking of certain property in Champaign County, Illinois, by exercising the right of eminent domain (Parcels 5680031PE, 5680031TE-1 and 5680031TE-2).

Pursuant to Notice as required by law and by the rules and regulations of the Commission, this matter was set for hearing on January 2, 2002 and January 8, 2002, before a duly authorized Administrative Law Judge ("ALJ") at its offices in Springfield, Illinois. Appearances were entered on behalf of Petitioner, Respondent and the Railroad Section Staff

DOCKETED

of the Commission. The ALJ granted Petitioner leave to proceed on its Amended Petition at the January 2, 2002 hearing and at the conclusion of the hearing on January 8, 2002, the record was marked "Heard and Taken." Prior to the record being marked "Heard and Taken", Respondent acknowledged that the property proposed to be taken by the Department will not adversely impact Respondent Norfolk Southern's railroad operations.

Scott Neihart, Project Engineer employed by District 5 of the Department, testified that Petitioner seeks a permanent easement and two temporary easements to the properties depicted on Petitioner's Exhibit "1". The property is required as a part of an improvement to FAP Route 808 (Illinois Route 150) from University Avenue to Illinois Route 130, south in Urbana, Champaign County, Illinois, which route is under the control and jurisdiction of Petitioner. Mr. Neihart testified concerning the improvement of Smith Road at its intersection with the current tracks of the Respondent and of the need to relocate the existing signal lights, railroad gates and the equipment related to the signal lights, as a part of the improvement. He further testified that the various easements are needed for the purpose of permanency of access for maintenance purposes and for temporary access during the period of construction. He further testified that the proposed improvements and necessary easements will not inhibit the operations of the railroad.

David Bayler, Land Acquisition Engineer employed by District 5, testified that the subject project has been funded for the current fiscal year, that the cost of relocating the signals and gates owned by the railroad will be paid by the Petitioner and of Petitioner's efforts to obtain the various easements sought in this proceeding from the Respondent but

an agreement for compensation had not been obtained. Petitioner will be unable to complete the planned improvement in the absence of obtaining the easements sought in this proceeding.

Richard Knight, a Registered Land Surveyor employed by District 5, testified that the legal description for the permanent easement sought in this proceeding closes within three millimeters and a gap of approximately three millimeters is within the tolerance provided by the standards used by registered land surveyors.

On February 6, 2002, Petitioner filed a Motion to Reopen the record in this proceeding, stating that the parties have had a number of conversations subsequent to January 2, 2002, and in those conversations reached an agreement on the configuration of the property in which a permanent easement is sought by the Petitioner and, further, reached an agreement on the correct legal description of that property. According to the Motion, a single parcel, No. 568003 1PE, is sought and the correct legal description of that property is attached to the Motion as Exhibit "A". There were no objections to the Motion and the Motion was allowed by the Administrative Law Judge.

The Commission, having considered the entire record and being fully advised in the premises, finds that:

1. Respondent, the Norfolk Southern Railway Company, a corporation, is registered to do business in the State of Illinois and is a rail carrier as defined by Section 18c-1101, et seq. of the Illinois Commercial Transportation Law effective January 1, 1986, as amended, the same being 625 ILCS 5\18c-1101, et seq.;

2. The Commission has jurisdiction over the parties hereto and the subject matter herein;

3. Petitioner seeks to acquire a permanent easement in Parcel No. 5680031PE, legally described in Appendix "A" attached hereto and also attached to the Motion to Reopen Record in this Docket as Exhibit "A", presently owned by Respondent, for an improvement of FAP Route 808 (Illinois Route 150) in Champaign County, Illinois, to better serve the traveling public and to subserve the public safety and convenience in Champaign County, Illinois;

4. Petitioner presented evidence as to the ownership by Respondent of the subject parcel as to which a permanent easement is sought and to its efforts to obtain the desired property by voluntary negotiations with the Respondent;

5. The evidence showed the construction can be carried out without interfering with Respondent's conduct of its rail carrier operations in the State of Illinois;

6. The desired property interest is reasonably necessary for the proposed project;

7. The prayer of the Petition herein is in the public interest and should be granted.

IT IS, THEREFORE, ORDERED BY THE ILLINOIS COMMERCE COMMISSION that the approval of the Commission be, and the same is hereby, granted to the Department of Transportation of the State of Illinois, for the purpose of exercising its power of eminent domain for the purpose of acquiring a permanent easement in Parcel No. 5680031PE and temporary easements in Parcels 5680031TE-1 and 5680031TE-2, legally described in Appendix "A" attached hereto;

IT IS FURTHER ORDERED that, subject to sections 18c-2201 and 18c-2206 of the Law, this is a final decision, subject to the Administrative Review Law.

BY ORDER OF THE COMMISSION this ____ day of _____, 2002

Chairman

EXHIBIT "A"

That part of the Southwest Quarter of Section 10, being in Township 19 North, Range 9 East of the Third Principal Meridian situate in the City of Urbana, Champaign County, Illinois, with bearing referenced to the Illinois State Plane Coordinate System, East Zone, (NAD 83) described as follows:

Commencing at the southwest corner of said Southwest Quarter;
thence, North 88 degrees 56 minutes 46 seconds East 262.516 meters [861.27 feet] on the south line of said Southwest Quarter to the centerline of Smith Road;
thence, North 0 degrees 43 minutes 03 seconds West 80.316 meters [263.50 feet] to the south right of way line of the Grantor and the POINT OF BEGINNING;

continuing along said south line for the following two courses:

- 1) thence, South 82 degrees 18 minutes 16 seconds West 7.863 meters [25.80 feet] to the existing west right of way line of Smith Road;
- 2) thence, North 87 degrees 24 minutes 25 seconds West 2.567 meters [8.42 feet];

continuing through the lands of the Grantor for the following two courses:

- 1) thence, North 0 degrees 43 minutes 03 seconds West 12.095 meters [39.68 feet];
- 2) thence, North 41 degrees 28 minutes 22 seconds West 20.136 meters [66.06 feet] to the existing common right of way line at the north of the lands of the Grantor and the south of FAP 808 (U.S. 150);

continuing along said common line the following four courses:

- 1) thence, South 87 degrees 02 minutes 09 seconds East 15.762 meters [51.71 feet] to a point of intersection with the west existing line of Smith Road;
- 2) thence, South 88 degrees 38 minutes 49 seconds East 65.365 meters [214.45 feet];
- 3) thence, South 87 degrees 20 minutes 15 seconds East 139.861 meters [458.86 feet];
- 4) thence, southeasterly 110.383 meters [362.15 feet] along a 3,069.243 meter [10,039.67 foot] radius tangential curve to the right having a chord of South 86 degrees 18 minutes 24 seconds East 110.377 meters [362.13 feet] to a point opposite railroad milepost 28.5;

thence, along the easterly line of the lands of the Grantor, South 4 degrees 39 minutes 54 seconds West 5.563 meters [18.25 feet];

continuing through the lands of the Grantor for the following eleven courses:

- 1) thence, South 87 degrees 38 minutes 01 second West 30.265 meters [99.29 feet];
- 2) thence, northwesterly 79.882 meters [262.08 feet] along a 3,064.761 meter [10,054.97 foot] radius non-tangential curve to the left having a chord of North 86 degrees 35 minutes 06 seconds West 79.880 meters [262.07 feet];

- 3) thence, North 87 degrees 19 minutes 54 seconds West 19.562 meters [64.18 feet];
- 4) thence, North 85 degrees 0 minutes 16 seconds West 37.531 meters [123.13 feet];
- 5) thence, North 83 degrees 50 minutes 36 seconds West 25.046 meters [82.17 feet];
- 6) thence, North 80 degrees 22 minutes 50 seconds West 12.593 meters [41.32 feet];
- 7) thence, North 87 degrees 19 minutes 54 seconds West 45.737 meters [150.06 feet];
- 8) thence, northwesterly 29.832 meters [97.87 feet] along an 878.932 meter [2,883.63 foot] radius tangential curve to the right having a chord of North 86 degrees 21 minutes 34 seconds West 29.831 meters [97.87 feet];
- 9) thence, South 78 degrees 28 minutes 54 seconds West 13.621 meters [44.69 feet];
- 10) thence, South 24 degrees 59 minutes 52 seconds West 8.749 meters [28.70 feet];
- 11) thence, South 0 degrees 43 minutes 03 seconds East 9.680 meters [31.76 feet] to the south right of way line of the Grantor;

continuing along said south line for the following two courses:

- 1) thence, North 87 degrees 54 minutes 54 seconds West 2.625 meters [8.61 feet] to the existing east line of Smith Road;
- 2) thence, South 82 degrees 18 minutes 16 seconds West 7.492 meters [24.58 feet] to the POINT OF BEGINNING;

containing 2,731 square meters [29,396 square feet], more or less, of which 1,427 square meters [15,360 square feet], more or less, lies within an existing permanent easement.

TRANSMISSION-REPORT

TIME : FEB 06 '02 14:43
TEL NUMBER : 2177531180
NAME : QUINN JOHNSTON

NBR	DATE	TIME	DURATION	PGS	TO	MODE	STATUS
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